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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SHASHI SOOD, Plaintiff and Appellant, v. CHANDER MITTAL et al., Defendants and Appellants; SHASHI SOOD, Plaintiff and Appellant, v. C.M. INTERNATIONAL TRADING CORPORATION, INC., Defendant and Respondent.	B164600 (Los Angeles County Super. Ct. No. KC034367)

APPEALS from judgments and orders of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

LaTorraca and Goettsch, Raymond H. Goettsch and Mary H. Kim for Plaintiff and Appellant.

Mitchell Reed Sussman for Defendants, Appellants, and Respondent.

I. INTRODUCTION

Defendants, Chander Mittal, CM Automotive Systems, Inc. (CMAS), Manav Engineering Corporation, Auto Safe Devices, Inc., Allies Services & Spares, Inc., and Sameer Investments, Inc., appeal from a judgment in favor of plaintiff, Shashi Sood. Plaintiff appeals from various orders, some protectively, and from a judgment in favor of defendant, C.M. International Trading Corporation, Inc. (CMI). We affirm the judgments.

II. BACKGROUND

Plaintiff is a certified public accountant. Plaintiff worked under contract for defendants from 1993-2000. Defendants fired plaintiff in August 2000. Plaintiff sued defendants for fraud, contract breach, wrongful termination, and a violation of the Labor Code with respect to accrued compensation. Defendants cross-complained alleging, among other things, that plaintiff had devised and orchestrated numerous tax schemes to their detriment and had facilitated the embezzlement by a third party of $900,000 from an affiliated company. A jury found in plaintiff's favor, awarding him $300,000 in deferred compensation. A nominal award was returned on the cross-complaint in favor of CMAS. A directed verdict was entered in favor of CMI on plaintiff's complaint. Plaintiff was required to pay CMI $5,000 in attorney fees.

III. DISCUSSION

A. Defendants' Appeal

1. Sufficiency of the evidence

Defendants contend there was insufficient evidence to support the jury's finding plaintiff was an employee rather than an independent contractor; further, plaintiff's uncontradicted testimony established as a matter of law that he was an independent contractor. The applicable standard of review is as follows: "In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party (*Leming v. Oilfields Trucking Co.* (1955) 44 Cal.2d 343, 346 []; *Bancroft-Whitney Co. v. McHugh* (1913) 166 Cal. 140, 142 []; 6 Witkin, Cal. Procedure (2d ed. 1971) § 245, at p. 4236) and in support of the judgment (*Waller v. Brooks* (1968) 267 Cal.App.2d 389, 394 []). All issues of credibility are likewise within the province of the trier of fact. (*Estate of Teel* (1944) 25 Cal.2d 520, 526 [].) 'In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*' (6 Witkin, Cal. Procedure, *supra,* § 249, at p. 4241.) All conflicts, therefore, must be resolved in favor of the [judgment]. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429 [].)" (*Nestle* v. *City of Santa Monica* (1972) 6 Cal.3d 920, 925-926, orig. italics; accord, *Bickel* v. *City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

The Supreme Court has set forth the factors to be considered in determining whether one is an employee or an independent contractor. "In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired. If the employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship

exists. [] Strong evidence in support of an employment relationship is the right to discharge at will, without cause. (*California Emp. Com. v. Bates* [(1944) 24 Cal.2d 432]; *California Emp. Com. v. Los Angeles etc. News Corp.* [(1944) 24 Cal.2d 421].) [] Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman supplies the instrumentalities, tools and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee. (Rest., Agency, 220; Cal.Ann. § 220.)" (*Empire Star Mines Co. v. Cal. Emp. Com.* (1946) 28 Cal.2d 33, 43-44, disapproved on another point in *People v. Sims* (1982) 32 Cal.3d 468, 480, fn. 8; see *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 873-874.)

The jury awarded plaintiff $300,000 in deferred compensation of $100,000 a year pursuant to an oral contract. We find substantial evidence supported the jury's finding. Plaintiff testified to an oral agreement with Mr. Mittal. Under the terms of the oral contract, plaintiff was to be paid $100,000 per year in deferred compensation separate and apart from the money he was to be paid under written agreements. Moreover, for three years, from 1998 through 2000, when plaintiff's services were terminated, he acted under written agreements that expressly stated he was an employee. This was substantial evidence that, at least for that three-year period, the parties believed they had created an employee-employer relationship. In addition, there was evidence plaintiff primarily worked at the corporate offices, and employees, including the in-house bookkeeper, reported to him; further, Mr. Mittal exercised, or attempted to exercise, control over the content of financial statements and tax returns prepared by plaintiff.

2. Attorney's fees

Because of the nature of the pleadings and the jurors' findings, we review defendants' contentions as to attorney's fees for an abuse of discretion. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140; compare *Baker-Hoey v. Lockheed Martin Corp.* (2003) 111 Cal.App.4th 592, 596.) Defendants contend it was error to award plaintiff his attorney's fees as he did not prevail on his fifth cause of action for violation of Labor Code sections 203 et seq. Labor Code section 218.5 states, "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. . . ." The jury was instructed on plaintiff's contract breach claims which arose from the nonpayment of wages. The jury was also instructed on plaintiff's Labor Code section 203 claim.[1] The Labor Code instructions were as follows: "One of the issues you must decide in considering the claims alleged by Mr. Sood relating to the claimed severance pay, the claimed deferred compensation and the claimed Labor Code violation is whether at the time of the events, he was an employee of the defendants. If you find that he was an employee, then you must determine if the parties actually entered the claimed . . . contracts. If you find that he was not an employee, then the claimed

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[1] Labor Code section 203 states: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. [¶] Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise."

contracts are not valid and cannot be the basis of recovery nor is there a Labor Code violation. [¶] . . . If an employer willfully fails to pay any wages to an employee who has been discharged for 30 days or more, the California Labor Code provides that the employee is entitled to 30 days' additional pay. An employer acts willfully if the employer intentionally failed or refused to perform an act to be done." The jury found in favor of plaintiff on his contract breach claim which was premised on the failure to pay wages. The jury found in favor of defendants on plaintiff's Labor Code section 203 claim.

Defendants argue the trial court should not have imposed attorney fees because the jury returned a defense verdict on the fifth cause of action premised on a Labor Code section 203 violation. The trial court's ruling on plaintiff's attorney's fees motion was as follows: "Plaintiff's Motion for Attorney's Fees is granted as follows: [¶] Labor [C]ode Section 218.5 stands separate from Section 203; thus, the determination of no [L]abor [C]ode section 203 violation does not mean that there was a negative finding of 'employee' status. Indeed, the answer to question 4 on the verdict form [breach of an oral contract to pay deferred compensation] manifests a finding of 'employee' status. There was a finding of nonpayment of 'wages' in question 4 and Labor Code Section 218.5 is applicable. Consist[e]nt with that [Labor Code] section the court awards attorney fees in the amount of $45,000.00." We agree with the trial court's analysis. The jury found plaintiff was entitled to recover lost wages which thereby warranted a Labor Code section 218.5 attorney fee award. The jury also found plaintiff had failed to sustain his burden of proving a willful failure to pay wages within a specified period and an entitlement to a 30-day penalty. Because plaintiff recovered on his lost wages claim, he was properly awarded his Labor Code section 218.5 attorney's fees.

3. Prejudgment interest

The trial court ruled, "Plaintiff's Motion for Pre-judgment interest is granted in the amount reflecting interest due on $300,000.00 from date of discharge (9/1/00) to date of judgment." Defendants argue plaintiff was not entitled to prejudgment interest because the amount of damages was not certain or capable of being made so (Civ. Code, § 3287, subd. (a)); rather, it depended upon a judicial determination based upon conflicting evidence. Defendants rely on plaintiff's trial testimony to the effect that as of September 11, 2000, he had a question in his mind as to whether or not he was *entitled to the severance pay of a million dollars*. Defendants have not shown there was conflicting evidence as to the amount of *deferred compensation* due plaintiff. We agree with plaintiff that the *deferred compensation* owed him at the rate of $100,000 per year was an amount "certain, or capable of being made certain by calculation . . ." within the meaning of Civil Code section 3287, subdivision (a). (*Olson v. Cory* (1983) 35 Cal.3d 390, 401-402; see also, *Currie v. Workers' Comp. Appeals Bd.* (2001) 24 Cal.4th 1109, 1115-1119.) Accordingly, it was not error to award prejudgment interest.

4. Parol evidence

Defendants assert it was error to allow plaintiff to testify to the terms of an oral agreement for deferred compensation that contradicted an integrated writing. The trial court observed that defendants' motion in limine on this point had been granted. However, the court ruled, defendants had "opened the door" to plaintiff's testimony regarding the oral agreement for deferred compensation. The trial court ruled: "[Y]ou asked him questions that would relate to the compensation which may or may not be inconsistent with his written statement. I think you have opened the door. I will let him go ahead." Defendants have not addressed the trial court's ruling in that regard. Because defendants have not presented pertinent argument and analysis, with citation to legal

authority, the issue has been waived. (E.g., *Estate of Randall* (1924) 194 Cal. 725, 728-729; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003-1004 & fn. 2.) In any event, on redirect examination, plaintiff's counsel was entitled to inquire in areas relevant to matters of credibility covered by cross-examination. (Evid. Code §§ 762, 774; *People v. Penrice* (1961) 195 Cal.App.2d 360, 364.) Defendants have failed to demonstrate an abuse of discretion occurred in this regard. (See *People v. Earp* (1999) 20 Cal.4th 826, 883; *De Witt v. Floriston Pulp & Paper Co.* (1908) 7 Cal.App. 774, 783.) Finally, defendants have failed to demonstrate that had a different ruling been made there was a reasonable probability of a different result. (Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

5. Excessive jury award

Finally, defendants assert the jury's award was excessive as a matter of law. They argue: "California Code of Civil Procedure [section] 339 (1) provides for a two year statute of limitations on oral contracts. [¶] . . . [¶] In the present case it is undisputed and plaintiff himself testified that he yearly demanded benefits due him under the alleged oral contract, $100,00[0].00 per year in deferred compensation for each [year] of service. [Citation.] [¶] Year after year plaintiff's demands were not met. [Citation.] [¶] Because of the two year statute of limitations and the yearly demands for payment, *it was error for the jury to award plaintiff* anything more than $200,000.00, representing deferred compensation for the two years immediately preceding the filing of the action." (Italics added.)

Defendants' failure to have requested statute of limitations instructions barred raising the issue in a post-verdict motion and on appeal. (See *Weathers v. Kaiser Foundation Hospitals* (1971) 5 Cal.3d 98, 103; *Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 250; *Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331, 346; *Estate of Nessel* (1958) 164 Cal.App.2d 798, 803-804.) The

statute of limitations question was never submitted for the jury's determination. In any event, defendants have failed to cite appropriately to the record or provide appropriate analysis thereby waiving the issue. (*Estate of Randall, supra,* 194 Cal. at pp. 728-729; *Pringle v. La Chapelle, supra,* 73 Cal.App.4th at pp. 1003-1004 & fn. 2.)

B. Plaintiff's Cross-Appeal

1. Directed verdict in favor of CMI

Plaintiff argues CMI's directed verdict motion should have been denied. More specifically, plaintiff contends there was substantial evidence Mr. Mittal was the alter ego of CMI. Directed verdict motions are governed by the same standards applied to nonsuit motions. (*Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 586-587, & fn. 3; *Elmore v. American Motors Corp.* (1969) 70 Cal.2d 578, 583.) In *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291, our Supreme Court explained the rules governing nonsuit motions in the trial court and on review: "A defendant is entitled to a nonsuit if the trial court determines that, as a matter of law, the evidence presented by plaintiff is insufficient to permit a jury to find in his favor. (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 117-118 [].) 'In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor."' (*Id.,* at p. 118.) A mere 'scintilla of evidence' does not create a conflict for the jury's resolution; 'there must be *substantial evidence* to create the necessary conflict.' (7 Witkin, Cal. Procedure (3d ed. 1985) Trial, § 410, p. 413, italics in original.) [¶] In reviewing a grant of nonsuit, we are 'guided by the same rule requiring evaluation of the evidence in the light most favorable to the

plaintiff.' (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 839 [].) We will not sustain the judgment '"unless interpreting the evidence most favorably to plaintiff's case and most strongly against the defendant and resolving all presumptions, inferences and doubts in favor of the plaintiff a judgment for the defendant is required as a matter of law."' (*Ibid.*, quoting *Mason v. Peaslee* (1959) 173 Cal.App.2d 587, 588 [].)"

In support of his assertion the trial court should have denied CMI's directed verdict motion, plaintiff states as follows: "Sood offered during trial evidence that shows that CMI was controlled by Mittal and CMAS, and that Mittal and Gordhan Patel have commingled and manipulated their personal assets and liabilities with those of CMI and CMAS. [¶] For example, CMI's office was within CMAS' building, and CMI moved with CMAS to the same address when CMAS relocated its office. (See Sood testimony, 1 RT 45:22-27.) Sood testified during trial that Mittal received payments in the amount of approximately $500,000 from CMI for CMI's loan from CMAS and deposited directly into his personal account in India. (See Sood testimony, 1 RT 77:20-80:23.)" The cited portions of the record show plaintiff testified that in 1995, CMI moved its offices to "the same location that [CMAS] moved to together in the same building for a little while"; CMI owed CMAS $500,000; Mr. Mittal took $500,000 from CMI and paid it to himself; and Mr. Mittal deposited the $500,000 it outside the country. This typically is a question of fact. (*Stark v. Coker* (1942) 20 Cal.2d 839, 846; *Arnold v. Browne* (1972) 27 Cal.App.3d 386, 393, disapproved on another point in *Reynolds Metal Co. v. Alperson* (1979) 25 Cal.3d 124, 129.) The foregoing evidence was insufficient to sustain, as a matter of law, a finding of an alter ego relationship between Mr. Mittal and CMI. (*Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Service* (1932) 217 Cal. 124, 129; 9 Witkin, Summary of Cal. Law (9th ed. 1989) Corporations, § 13, pp. 526-527.)

2. Attorney's fees

Plaintiff contends that pursuant to Civil Code section 1717, he was entitled to reasonable attorney's fees incurred in defense of defendants' cross-complaint. It is undisputed plaintiff was not a party to the contract on which he relies. The contract at issue is a settlement agreement between Chandler and Rekka Mittal and defendant, CMAS. Plaintiff is not a party to the settlement agreement. We review the legal basis for an attorney's fee award de novo. (*Whiteside v. Tenet Healthcare Corp.* (2002) 101 Cal.App.4th 693, 707; *Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.) Plaintiff has failed to demonstrate he is entitled to fees pursuant to a contract to which he was not a party. Even if plaintiff was a third party beneficiary of the settlement agreement in certain respects, he has not shown the parties to that agreement intended the attorney's fee provision to benefit him. (*Whiteside v. Tenet Healthcare Corp., supra,* 101 Cal.App.4th at pp. 708-709; *Sessions Payroll Management, Inc. v. Noble Construction Co., supra,* 84 Cal.App.4th at pp. 680-681; *Super 7 Motel Associates v. Wang* (1993) 16 Cal.App.4th 541, 546.)

Plaintiff also argues he was entitled to attorney's fees incurred in prosecuting his fifth cause of action for the following Labor Code violations: failure to pay $1 million in severance pay; failure to pay "approximately $800,000[] in accrued salary"; and failure to pay statutory penalties. The jury found no statutory Labor Code violations. As noted above, however, the trial court *did* award plaintiff attorney's fees pursuant to Labor Code section 218.5, because he prevailed on a claim for nonpayment of wages. Plaintiff cites no authority for the proposition he should have recovered *additional* attorney's fees for prosecuting a cause of action on which he did *not* prevail.

Finally, plaintiff asserts: "[T]he reasonable amount incurred by [him] in prosecution of his complaint was $120,000.00. This is because [he] had entered into a contingency fee agreement with his counsel, wherein he agreed to pay 40% of any recovery [(here, $300,000)] following trial in this matter. . . . As a result, the trial court

should have ordered that defendants pay $120,000.00 in attorney and paralegal fees." This assertion, made without citation to pertinent legal authority, has not been properly preserved for appellate review. (E.g., *Estate of Randall, supra,* 194 Cal. at pp. 728-729; *Pringle v. La Chapelle, supra,* 73 Cal.App.4th at pp. 1003-1004 & fn. 2.)

3. Costs

Plaintiff asserts he was entitled to but did not recover $8,249.57 in fees paid to a discovery referee appointed by the court on defendants' motion, and $7,188.73 for copies of exhibits used for trial and documents produced pursuant to deposition subpoenas and exhibits for depositions. We review the trial court's ruling on defendant's motion to tax costs for an abuse of discretion. (Code Civ. Proc., § 1032, subd. (a)(4); *Wheeler v. First National Bank* (1937) 10 Cal.2d 185, 190-191; *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1298; *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1395.)

a. discovery referee

Prior to trial, on September 24, 2001, defendants filed a motion for appointment of a discovery referee contending: only 2 of 19 scheduled depositions had taken place; plaintiff had interposed meritless objections; one deponent had failed to produce subpoenaed documents; plaintiff had filed 3 meritless protective order motions; plaintiff had filed a fourth protective order motion; and pending ruling on the fourth protective order motion, plaintiff's counsel had refused to permit any depositions to proceed.

In the cost memorandum filed December 18, 2002, plaintiff sought recovery of fees paid to a discovery referee in the sum of $8,249.57. On December 31, 2002, defendants moved to tax costs as to the $8,249.57 paid by plaintiff to the discovery referee. Defendants asserted in their motion to tax costs, "[P]laintiff's cost bill fails to

demonstrate that this expense, $8,249.57, is reasonably necessary to the conduct of the litigation and reasonable in amount." In his opposition to the December 31, 2002, motion to tax costs, plaintiff attached a copy of the September 24, 2001, motion for appointment of a discovery referee. Also, plaintiff attached copies of the discovery referee bills to the December 18, 2002, cost memorandum. But in neither the December 18, 2002, cost memorandum nor the January 31, 2003, opposition to the motion to tax did plaintiff present any evidence concerning: the orders of the referee, retired Judge Thomas Nuss; whether the discovery referee's orders were reasonably necessary to the conduct of the litigation; or the reasonableness of the $8,249.57 bill. The trial court granted defendant's motion to tax costs as to the $8,249.57 paid to the discovery referee.

Even if a party is statutorily entitled to costs, the trial court retains the jurisdiction to deny them if they are not "reasonably necessary." (Code Civ. Proc., § 1033.5, subd. (c)(2); *Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 245 ["the intent and effect of section 1033.5, subdivision (c)(2) is to authorize a trial court to disallow recovery of costs, including filing fees, when it determines the costs were incurred unnecessarily"].) The September 24, 2001, motion for appointment of a discovery referee indicated the need for such action was occasioned by plaintiff's failure to abide by his obligations under the Civil Discovery Act of 1986. Without abusing discretion, the trial court reasonably could have ruled that the discovery referee costs were incurred unnecessarily by reason of plaintiff's discovery intransigence. (*Ibid*.; Wegner et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2003) ¶ 17:112.1, p. 17-35 (rev. #1, 2003).)

b. photocopying and exhibit costs

Plaintiff filed a cost memorandum claiming $7,188.73 for models, blowups, and photocopies of exhibits. Code of Civil Procedure section 1033.5, subdivision (a)(12) lists as an allowable cost, "Models and blowups of exhibits and photocopies of exhibits may

be allowed if they were reasonably helpful to aid the trier of fact." The filing of the verified cost memorandum was prima facie of plaintiff's entitlement to an award of $7,188.73 for models, blowups, and photocopies of exhibits. (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624; *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 698.) The burden of proof thereby shifted to defendants to demonstrate that the $7,188.73 for models, blowups, and photocopies of exhibits should not be awarded to plaintiff. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131; *Oak Grove School Dist. v. City Title Ins. Co.*, *supra*, 217 Cal.App.2d at p. 699.) Defendant points to plaintiff's counsel's admission in the opposition to tax costs as follows: "During [the] trial in this action, our office used an Elmo to introduce exhibits to the jury. Our office did not use any blowups." Without abusing discretion, the trial court could reasonably have concluded that no photocopying and exhibit costs should have been awarded because of plaintiff's counsel's under oath admission that an Elmo was used to display the pertinent documents and it was in the best position to determine what was reasonably helpful in aiding the trier of fact within the meaning of Code of Civil Procedure section 1033.5, subdivision (a)(12).

4. CMI's attorney's fees

The trial court awarded CMI $5,000 in attorney's fees as the prevailing party on plaintiff's fifth cause of action for violation of Labor Code section 203. Plaintiff argues CMI made no timely request for attorney's fees. Plaintiff argues it was therefore error to award fees to CMI. We disagree. As noted above, CMI prevailed in defense of plaintiff's complaint on the fifth cause of action on a motion for directed verdict. Plaintiff specifically sought attorney's fees in his complaint under Labor Code section 218.5 pursuant to his fifth cause of action for Labor Code violations. *In their answer*, defendants sought, among other things, "reasonable attorney fees." As noted previously, Labor Code section 218.5 provides a prevailing party in a Labor Code section 203 claim

is entitled to its attorney's fees. CMI prevailed in defense of plaintiff's Labor Code section 203 claim As the prevailing party, CMI was entitled to attorney's fees. (Labor Code, § 218.5.) Plaintiff's contention to the contrary is without merit.

IV. DISPOSITION

The judgments in favor of plaintiff, Shashi Sood, and in favor of defendant, C.M. International Trading Corporation, Inc., are affirmed. Plaintiff, Shashi Sood, is to recover his costs on appeal, jointly and severally, from defendants, Chander Mittal, CM Automotive Systems, Inc., Manav Engineering Corporation, Auto Safe Devices, Inc., Allies Services & Spares, Inc., and Sameer Investments, Inc. Defendant, C.M. International Trading Corporation, Inc., is to recover its costs on appeal from plaintiff, Shashi Sood.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

GRIGNON, J.

MOSK, J.